

# Appendix K

Model Borough Boundaries

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## I. Legal Basis for Model Borough Boundaries.

Consideration of “model borough boundaries” by the Commission in reviewing the suitability of any borough incorporation proposal is provided for in 3 AAC 110.060(b). Specifically, it states:

Absent a specific and persuasive showing to the contrary, the commission will not approve a proposed borough with boundaries extending beyond any model borough boundaries.

Additionally, 3 AAC 110.190(c) provides for consideration of model borough boundaries by the Commission in reviewing the suitability of any borough annexation proposal. Specifically, it states:

Absent a specific and persuasive showing to the contrary, the commission will not approve annexation of territory to a borough extending beyond the model borough boundaries developed for that borough.

## II. Proper Construction of the Standard.

In a narrow sense, the standards allow any boundary proposal that does not exceed the model borders. However, in a broader sense, the standard at issue concerns the fundamental relationship between the boundaries of a proposed new or expanded borough and its respective model.

In past borough incorporation and annexation proceedings, the Commission has considered this standard in that broad context. For example, in 1998, the Ketchikan Gateway Borough petitioned the Commission to annex all but 21.4 square miles of the territory within its model borough boundaries.

The exclusion of the 21.4 square miles would have rendered Hyder an enclave consisting of 17.9 square miles inhabited by 151 residents. Additionally, Meyers Chuck would have become a near-enclave of 3.5 square miles in which 28 individuals lived. The Commission viewed the two exclusions as problematic and invited the Borough to amend its petition to include those areas. After the Borough declined to do so, the Commission denied its petition. In doing so, the Commission noted as follows:

The effect and significance of the failure of a borough proposal to conform to its model boundaries must be judged in the unique circumstances presented by each petition. . . .

The Commission believes that some deference is owed to the model borough boundaries beyond that called for in a narrow interpretation of 19 AAC 10.190(c).<sup>1</sup>

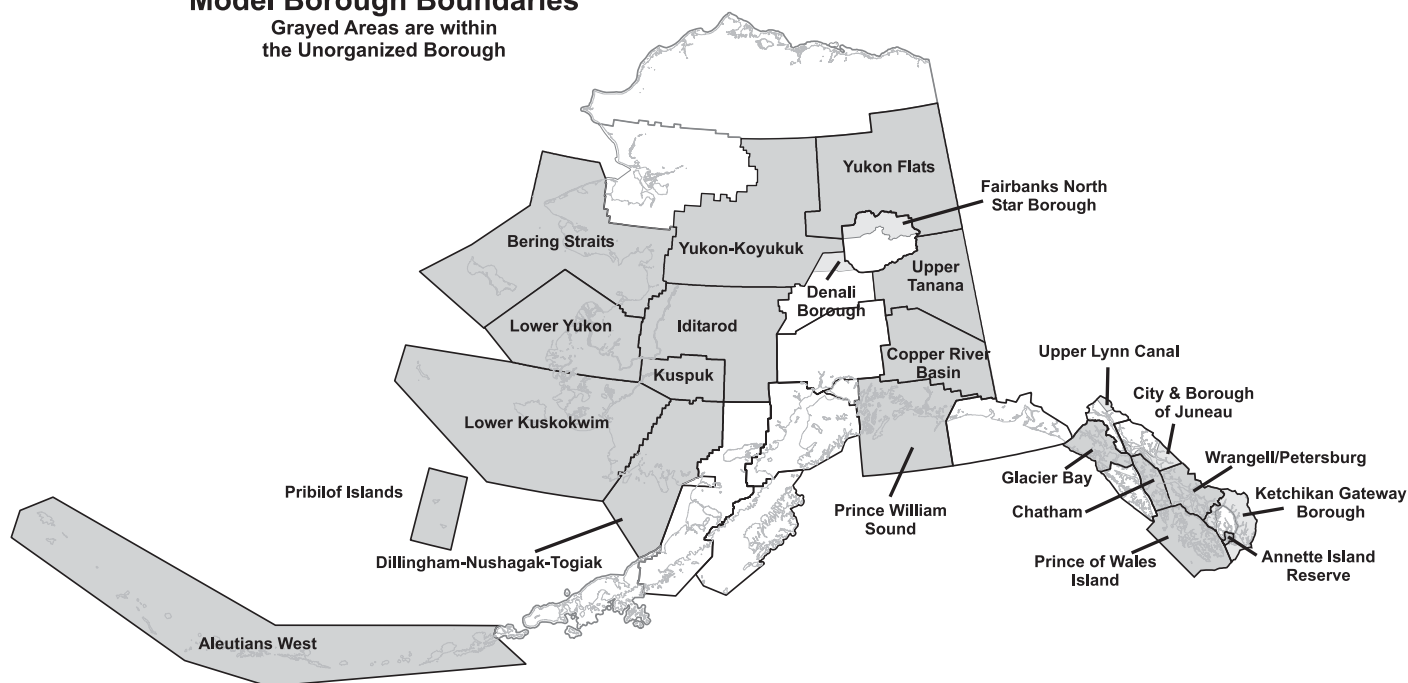
. . . [T]he Borough’s model boundaries also reflect the application of all borough boundary standards and relevant constitutional principles to the pertinent facts in the Borough’s circumstances. In the record, there is insufficient justification for deviation from those model boundaries here.

(Commission, *Statement of Decision in the Matter of the February 28, 1998 Petition of the Ketchikan Gateway Borough for Annexation of 5,524 Square Miles*, April 16, 1999, p. 7.)

<sup>1</sup> Since renumbered as 3 AAC 110.190(c).

### Model Borough Boundaries

Grayed Areas are within the Unorganized Borough



### III. Establishment of Model Borough Boundaries.

The Commission defined model borough boundaries for unorganized areas of Alaska from 1990 through 1992 using the constitutional, statutory, and regulatory standards for the creation of boroughs.

During the three-year effort, the Commission concluded that, in many instances, the boundaries of REAAs were also model boundaries for future boroughs. REAAs are regional institutions established more than a quarter century ago for the efficient and effective delivery of educational services. REAAs have a single function – education. It is significant that education is also one of the few mandatory duties of boroughs and is their greatest responsibility as measured by expenditures.

Statutory standards for REAAs set out in AS 14.08.031 are very similar to those for boroughs. When REAAs were created in 1975, they were widely perceived as forerunners to organized bor-

oughs. REAA boundaries have strong parallels to borough boundaries. The historical record demonstrates the fundamental relevance of REAAs in terms of establishing boundaries of boroughs.

Alaska's Constitution requires the division of the entire state into organized and/or unorganized boroughs. The division must occur according to standards including population, geography, economy, transportation, and other factors. Each organized and unorganized borough must embrace an area and population with common interests. (Article X, Section 3.) The Constitution also favors a minimum number of boroughs. (Article X, Section 1.)

The Borough Act of 1961 created a single unorganized borough encompassing all of Alaska not within an organized borough.<sup>2</sup> Since there were no organized boroughs at that time, the entire state was initially configured as a single unorganized borough.

<sup>2</sup> Ch. 146, SLA 1961.

“Dividing” the entire state into a single borough brushed aside the constitutional requirement that each borough embrace an area of common interests. Alaska, of course, has tremendous diversity with respect to social, cultural, economic, transportation, geographic, and other relevant characteristics.

Today, more than four decades after the Borough Act of 1961, the single residual unorganized borough encompasses an estimated 374,843 square miles – 57 percent of Alaska. The area of the unorganized borough is larger than the countries of France and Germany combined.

As currently configured, the unorganized borough ranges in a noncontiguous fashion from the southernmost tip of Alaska to an area approximately 150 miles above the Arctic Circle. It also extends in a non-contiguous manner from the easternmost point in Alaska (at Hyder) to the westernmost point in Alaska at the tip of the Aleutian Islands. The unorganized borough encompasses:

- portions of each of Alaska’s 4 judicial districts;
- 11 entire census districts;
- all or portions of 10 State House election districts;
- all or portions of 6 State Senate election districts;
- 19 entire REAAs;
- all or portions of 10 of Alaska’s 12 regional Native corporations formed under ANCSA;
- 18 entire model boroughs;<sup>3</sup> and
- model borough territory for 5 existing organized boroughs.

<sup>3</sup> With the consolidation of the Aleutians West Model Borough and the Aleutians Model Borough, the number of model unorganized boroughs was reduced from nineteen to eighteen.

Clearly, the unorganized borough remains a vast area with extremely diverse interests rather than common interests as required by the constitution. This is particularly evident from the fact that the unorganized borough spans so many election districts, census districts, REAAs, regional Native corporations, and model borough boundaries.

In the late 1980s, the Commission received a number of competing proposals to annex and incorporate various portions of the unorganized borough.<sup>4</sup> The Commission concluded that it would be best to examine those and future borough proposals in

<sup>4</sup> In October 1988, the Kodiak Island Borough petitioned to annex an estimated 12,825 square miles (including submerged land and water beyond the State’s jurisdictional limits). That prompted residents of the Alaska Peninsula to file a competing petition for the incorporation of the Lake and Peninsula Borough. The proposed Lake and Peninsula Borough contained an estimated 16,675 square miles, including much of the territory proposed for annexation to the Kodiak Island Borough. In May 1989, the Fairbanks North Star Borough petitioned to annex 216 square miles. Annexation was widely opposed by residents of the adjacent unorganized area. The Fairbanks annexation petition prompted the adjacent region to conduct a study of the feasibility of forming a borough; however, no competing petition was filed. In June 1989, the City and Borough of Juneau petitioned to annex 140 square miles. Again, while the annexation proposal was opposed by inhabitants of the adjacent region, no competing borough proposal was filed. In June 1989, the Matanuska-Susitna Borough petitioned to annex an estimated 9,844 square miles to and including Healy. In October of that year, residents of the Railbelt REAA filed a competing petition for the formation of the Denali Borough. The boundaries of the proposed Denali Borough encompassed an estimated 9,406 square miles, including much of the territory proposed for annexation by the Matanuska-Susitna Borough. That same month, another group of residents filed a third competing petition for incorporation of the Valleys Borough. The Valleys Borough proposal encompassed about 14,900 square miles, including most of the proposed Denali Borough as well as the community of Nenana.

the context of model boundaries based on constitutional, statutory, and regulatory standards for borough incorporation.

Consequently, the Commission initiated the effort to define model borough boundaries in 1990. The project was completed at the end of 1992. The Alaska Legislature appropriated funding for the project. The Commission conducted hearings regarding model borough boundaries in person or by teleconference in 88 communities.

#### **IV. Relationship Between Model Borough Boundaries and REAA Boundaries.**

##### **A. Nine model boroughs conform precisely to REAAs.**

Nine model boroughs have boundaries that correspond precisely to individual regional educational attendance areas (REAAs) as listed below.

1. The Annette Island Model Borough boundaries are identical to those of the Annette Island REAA.
2. The Bering Strait Model Borough boundaries are identical to those of the Bering Strait REAA (including the City of Nome).
3. The Copper River Model Borough boundaries are identical to those of the Copper River REAA.
4. The Dillingham-Nushagak-Togiak Model Borough boundaries are identical to those of the Southwest Region REAA (including the City of Dillingham).
5. The Iditarod Model Borough boundaries are identical to those of the Iditarod REAA.
6. The Kuspuk Model Borough boundaries are identical to those of the Kuspuk REAA.

7. The Pribilof Islands Model Borough boundaries are identical to those of the Pribilof Islands REAA.
8. The Prince William Sound Model Borough boundaries are identical to those of the Chugach REAA (including the City of Cordova and the City of Valdez).
9. The Aleutian Region Model Borough boundaries are identical to those of the Aleutian Region REAA (including the City of Unalaska).

##### **B. Two additional model boroughs conform to REAAs except that they also include tiny federal transfer REAAs which are enclaves within the REAAs.**

There are currently 19 REAAs in Alaska. Only 17 of those were created in 1975 according to regional standards in AS 14.08.031. The remaining two – Kashunamiut and Yupiit – were established according to an act of the Legislature (Ch. 66, SLA 1985).

The Kashunamiut REAA and the Yupiit REAA are referred to in the 1985 law authorizing their creation as “federal transfer REAAs”. The two FTREAs lack the regional characteristics of the 17 REAAs established under AS 14.08.031. Instead, two exhibit community-level characteristics similar to those of city school districts.

The Kashunamiut FTREAA is a relatively tiny enclave within the Lower Yukon REAA. The boundaries of the Kashunamiut FTREAA are identical to those of the second class City of Chevak (population 765).<sup>5</sup> They encompass slightly more than

<sup>5</sup> In effect, this circumstance allows residents of a second class city in the unorganized borough a similar level of local control over school functions as is accorded organized boroughs and home rule and first class cities in the unorganized borough. Unlike municipal school districts, however, the FTREAs are not subject to the local contribution requirements that applies to municipal school districts.

1 square mile. In contrast, the Lower Yukon REAA encompasses an estimated 19,302 square miles. The first class City of Saint Mary's is also within the Lower Yukon Model Borough.

The Yupiit FTREAA is made up of three small non-contiguous enclaves within the Lower Kuskokwim REAA. One is the territory within the boundaries of the City of Akiak (encompassing approximately 2 square miles), another is the territory within the former City of Akiachak (encompassing less than 12 square miles), and the third is the territory within the former City of Tuluksak (encompassing approximately 4 square miles). Collectively those three noncontiguous enclaves encompass approximately 18 square miles. In contrast, the Lower Kuskokwim REAA comprises an estimated 23,792 square miles.

The Lower Yukon Model Borough and Lower Kuskokwim Model Borough are inhabited by an estimated 21,461 residents. That population, together with the estimated 29,158 residents of the eight previously noted model boroughs, contains approximately 61.9 percent of the population of the unorganized borough.

**C. Two other model boroughs largely conform to REAAs except for the placement of relatively small portions of the REAAs within the model boundaries of adjoining existing organized boroughs.**

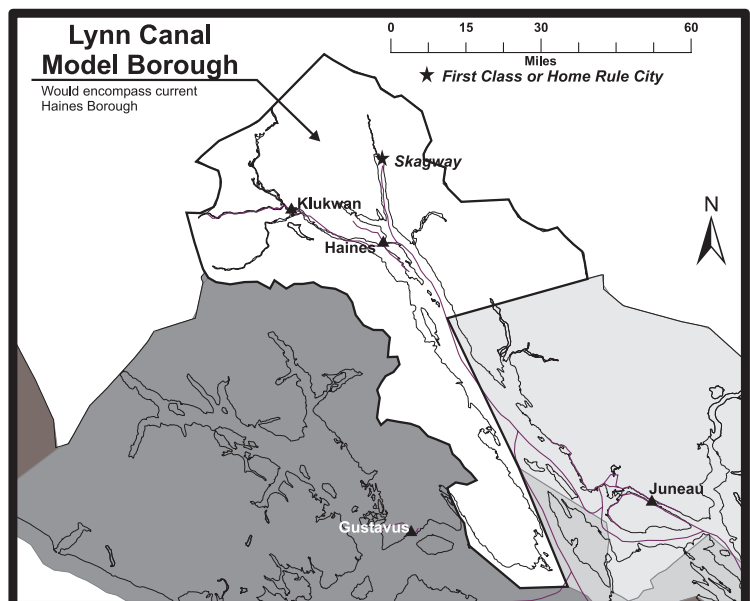
AS 14.08.031 requires the division of the entire unorganized borough into REAAs. In some cases, the result has been unnatural or contrived REAA boundaries. For example, Klukwan, which is an enclave in the core of the Haines Borough, is a non-contiguous component of the Chatham REAA. In the Commission's view, Klukwan has greater social, cultural, economic, geographic, transportation, and other ties to the area within the Haines Borough than it does to communities served by the Chatham REAA. Consequently, the Commission placed Klukwan in the same

model borough as the Haines Borough. For similar reasons, the Commission placed parts of the unorganized borough within the model boundaries of four other existing organized boroughs.

In two of the five cases, remnant model boroughs were created that largely conform to their respective REAAs. Those are the Yukon Flats Model Borough and the Yukon Koyukuk Model Borough.

The Yukon Flats Model Borough boundaries are identical to those of the Yukon Flats REAA except that Livengood and Central were placed within the Fairbanks North Star Borough model boundaries. The Commission concluded that Livengood and Central had more in common with the area inside the Fairbanks North Star Borough than it did with the remainder of the area within the Yukon Flats REAA. In particular, road connections, proximity, and economic ties between Fairbanks, Livengood, and Central were significant factors guiding the Commission's decision.

Livengood and Central comprise 163 residents, representing approximately 10 percent of the population of the Yukon Flats REAA. In other words, approximately 90 percent of the Yukon Flats REAA population remains within the Yukon Flats Model Borough.





Similarly, the Yukon Koyukuk Model Borough boundaries are identical to those of the Yukon Koyukuk REAA, except that Nenana and the nearby settlement of Four Mile Road were placed within the Denali Borough model boundaries. Here again, the Commission concluded that Nenana and Four Mile Road had more in common with the area inside the Denali Borough than they did with the remainder of the area within the Yukon Koyukuk REAA. Road connections, proximity, and economic ties were critical factors leading to the Commission's action.

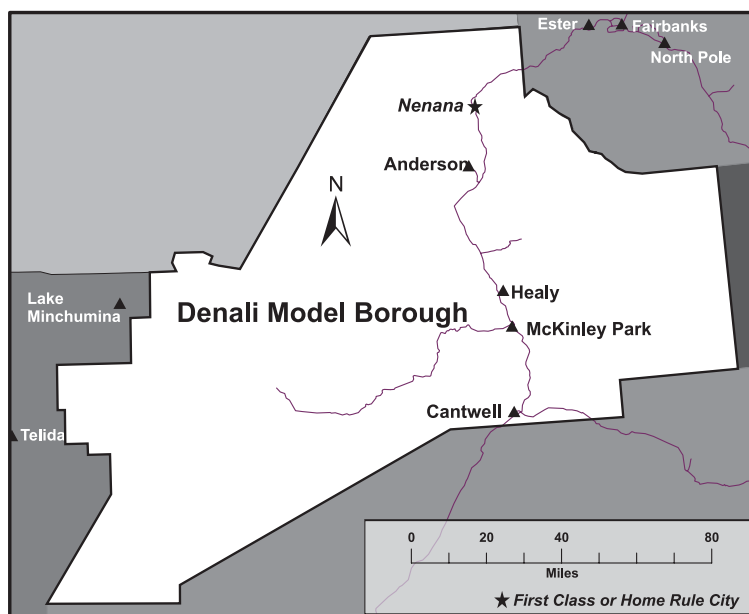
Nenana and Four Mile Road are inhabited by 440 residents, or 12.0 percent of the 3,669 residents within the Yukon Koyukuk REAA (including Tanana, Galena, and Nenana). In this case, 88 percent of the population of the Yukon Koyukuk REAA remains intact as the Yukon Flats Model Borough.

The Yukon Flats Model Borough and the Yukon Koyukuk Model Borough encompass an estimated 4,188 residents. That population, together with the estimated 50,619 residents of the ten previously noted model boroughs, includes approximately 67.0 percent of the population of the unorganized borough.

#### **D. One model borough encompasses two existing REAAs.**

The Upper Tanana Basin Model Borough covers the combined areas of the Delta Greely REAA and the Alaska Gateway REAA. When the boundaries of the Upper Tanana Basin Model Borough were defined, the prospect existed for base realignment and closure at Fort Greely in the Delta Greely REAA. That, in part, prompted the Commission to combine the two REAAs into one model borough.

With the recent selection of Fort Greely as a research site for the U.S. missile defense system, and the prospect for development of the Pogo mineral deposit as a world-class gold mine, the economic

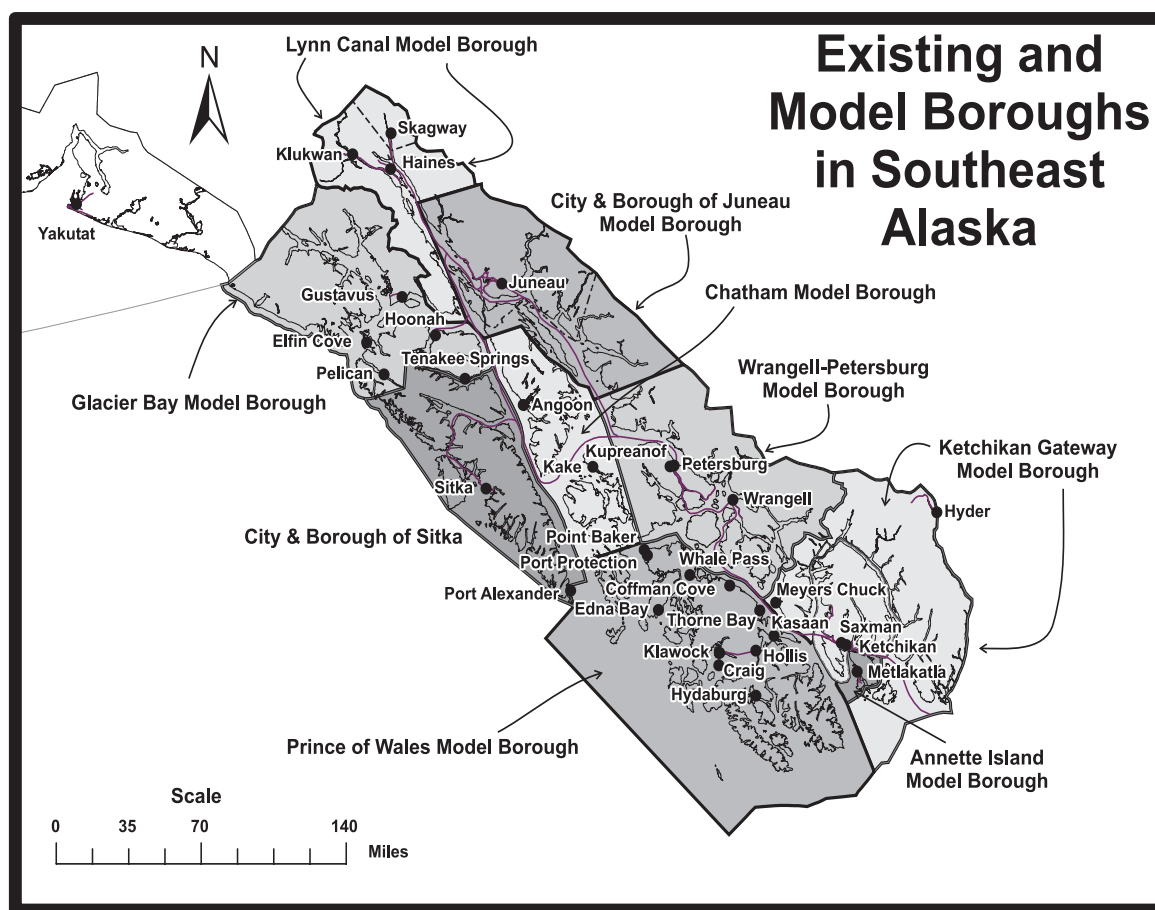


future for the Delta Greely region is brighter than it was in the early 1990s. Changing circumstances in that part of the unorganized borough might warrant modification of the previously established model boundaries. The Upper Tanana Basin Model Borough encompasses an estimated 6,316 residents, or 7.7 percent of the unorganized borough population.

#### **E. Southeast Alaska is divided into four model boroughs.**

Except for relatively small portions of Alaska's panhandle that are included within the model boundaries of existing boroughs, the Commission divided the unorganized areas of southeast Alaska into four model boroughs. Those are the Glacier Bay Model Borough, Chatham Model Borough, Prince of Wales Model Borough, and Wrangell-Petersburg Model Borough.

The Glacier Bay Model Borough encompasses communities that are presently within the Chatham REAA. The population of the Glacier Bay Model Borough (1,739) comprises approximately 50.5 percent of the population of the Chatham REAA. Because of the particularly unnatural or contrived nature of the Chatham REAA boundaries (e.g., comprised of three noncontiguous



components), 29.1 percent of its population is found within the model boundaries of an existing borough. The remaining 20.4 percent of the Chatham REAA population is grouped with Kake in the Chatham Model Borough.

The Prince of Wales Model Borough is within the Southeast Island REAA. Its population is 4,651, or 40.9 percent of the population of the area within the Southeast Island REAA. The Wrangell-Petersburg Model Borough comprises 48.6 percent of the population within the Southeast Island REAA boundaries. The balance of the population within the Southeast Island REAA is comprised of Kake, Hyder, and Meyers Chuck, whose location within model boroughs was addressed previously.

The Commission views model borough boundaries as a credible and useful tool in guiding future policy decisions regarding the establishment and alteration of borough governments. Recently, the concept of

model borough boundaries has been challenged by certain interested organizations. The challenge seems to have its roots in a recent decision of the Commission to reject a particular borough proposal.

On September 27, 2002, the Commission unanimously denied a petition to incorporate a Skagway borough principally because the proposal lacked the regional nature that is fundamental to boroughs. Petitioners for the Skagway borough subsequently filed a judicial appeal.<sup>6</sup> As reflected in the following newspaper account, Skagway also pledged to undertake an effort to encourage the legislature to review the model borough boundaries and other borough standards.<sup>7</sup>

<sup>6</sup> The appeal was filed in Superior Court in Juneau on November 27, 2002 (Case No. 1JU-02-01024CI).

<sup>7</sup> *Juneau Empire*, November 15, 2002.





Consultant Kathleen Wasserman testifying at Skagway hearing.

In addition to a legal path, Skagway plans to take its concerns about borough formation to the state Legislature, [Skagway City Manager and Petitioner's Representative Bob] Ward said. The community has asked the Alaska Municipal League and the Southeast Conference, a regional organization, for support.

'We're asking the Legislature to look at the Model Borough Boundaries Act<sup>8</sup> and look at the standards ... with an eye to considering whether or not those things are still pertinent in the Alaska of today as opposed to the Alaska envisioned by the members of the Constitutional Convention in 1956,' Ward said. 'I'm not sure if it will help us, but it may help the borough process in general.'

At the apparent behest of Skagway, the Southeast Conference,<sup>9</sup> Alaska Municipal League,<sup>10</sup> and the City of Petersburg adopted resolutions in 2002 declaring the model borough boundaries to be outdated and unfeasible. The resolutions adopted by those three organizations declared "... the economics of the State have dramatically declined and changed within the past ten years, rendering the Model Borough Boundary proposal of 1992<sup>11</sup> obsolete and impractical."

None of the organizations advised the Commission about the proposed resolutions before they acted on them. Consequently, the Commission had no opportunity to comment on the matter while it was under consideration by those organizations.

The Commission differs with the views expressed by those organizations in two fundamental respects. The first concerns the claim that Alaska's economy has "dramatically declined" during the past decade. The second concerns the relationship between the state of the economy and model borough boundaries.

With respect to the first issue, while particular segments of Alaska's economy (e.g., commercial salmon fishing and timber) have indeed suffered sharp declines over the past decade, other

<sup>8</sup> There is no "Model Borough Boundaries Act". As noted above, model borough boundaries were defined by the Local Boundary Commission with support from the Legislature. However, the Legislature never formally adopted the model borough boundaries. The Commission adopted model borough boundaries by regulation.

<sup>9</sup> The Southeast Conference describes itself as a "regional, nonprofit corporation that advances the collective interests of the people, communities and businesses in southeast Alaska. Members include municipalities, Native corporations and village councils, regional and local businesses, civic organizations and individuals from throughout the region. Our mission is to undertake and support activities that promote strong economies, healthy communities and a quality environment in southeast Alaska." < <http://www.seconference.org/>>

<sup>10</sup> The Alaska Municipal League (AML) is a voluntary, nonprofit, nonpartisan, statewide organization of over 140 cities, boroughs, and unified municipalities in Alaska, representing over 98 percent of Alaskan residents. AML also offers "associate" status to organizations and commercial firms, and "affiliate" status to professional associations of municipal officials. <[http://www.akml.org/index.asp?Type=B\\_BASIC&SEC={5F567EBE-14AF-4F10-B368-B5A3C16F017B}>](http://www.akml.org/index.asp?Type=B_BASIC&SEC={5F567EBE-14AF-4F10-B368-B5A3C16F017B}>)

<sup>11</sup> There is no "Model Borough Boundary proposal of 1992". As noted above, model borough boundaries were defined and formally adopted in regulation by the Commission.

components of Alaska's economy have grown. In the Commission's view, Alaska's economy has not "dramatically declined" overall during the last ten years. Certainly, there has been no economic decline comparable to the post-TAPS construction downturn of the late 1970s or the statewide recession of the mid-to-late 1980s. Consider, for example, the following comparison of six important economic measures for the most recent year on record vis-à-vis the previous ten years:

- Alaska's gross state product increased by 12.0 percent.<sup>12</sup>
- Employment rose by 19.8 percent (over 49,800 new jobs created).<sup>13</sup>
- The rate of unemployment dropped by 27.6 percent (from 8.7 percent to 6.3 percent).<sup>14</sup>
- Per capita personal income climbed 33.2 percent.<sup>15</sup>
- Personal income grew by 48.3 percent.<sup>16</sup>
- The value of taxable property increased by 63.1 percent.<sup>17</sup>

Regarding the second issue, the Commission takes the view that even if Alaska's economy had "dramatically declined," model borough boundaries would not have been rendered "obsolete and impractical". Significant reductions in the *strength* of the economy may affect the *economic viability* of prospective borough governments. However, model borough boundaries are dependent upon economic interrelationships and other factors (not the strength of the economy).

The Commission cannot apply a different set of borough standards to existing organized boroughs than it applies to unorganized areas of Alaska. Thus, if economic changes during the past decade had rendered model borough boundaries "obsolete and impractical", it would have had the same effect on the formal corporate boundaries of organized boroughs. The same would hold true for REAAs.

Yet, there has been only one borough boundary change in the past ten years. That change resulted in an *expansion* of the boundaries of the Yakutat borough. Moreover, there have been no changes in the boundaries of REAAs during the past ten years.

As noted in the foregoing, with few exceptions, model borough boundaries closely follow REAA boundaries. In fact, the vast majority of residents of the unorganized borough live in model boroughs that are identical to the REAAs in which they live. The fact that there is no clamor to change the boundaries of REAAs suggests to the Commission that those advocating changes in or abandonment of model borough boundaries are more fundamentally opposed to borough government boundaries as embodied in Alaska's Constitution,

<sup>12</sup> In 2000, Alaska's gross state product was \$27,747,000,000; the comparable figure in 1990 was \$24,774,000,000. That represents an increase of 12 percent. Source: Bureau of Economic Analysis.

<sup>13</sup> Annual average employment in 2001 was 301,792; the comparable figure for 1991 was 251,940. Source: Alaska Department of Labor.

<sup>14</sup> The annual average unemployment rate in 1991 was 8.7 percent; the comparable figure for 2001 was 6.3 percent. That represents a drop of 2.4 percentage points or a 27.6 percent drop in the rate of unemployment. Source: Alaska Department of Labor.

<sup>15</sup> Per capita personal income in 2001 was \$30,936, which was \$7,710 higher than the 1991 figure of \$23,226. Source: Bureau of Economic Analysis.

<sup>16</sup> Personal income in 2001 was \$19,641,252,000; the comparable 1991 figure was \$13,242,314,000. Source: Bureau of Economic Analysis.

<sup>17</sup> The 2002 full and true value of taxable property in Alaska (excluding oil and gas property) was \$41,725,315,500. That figure was 63.1 percent higher than the comparable 1992 figure of \$25,576,072,700. Source: State Assessor.

rather than just the model borough boundaries.<sup>18</sup> In any case, insofar as model borough boundaries are based on standards cited in Article X, Section 3 of Alaska's Constitution, the presumptive regulatory standard (3 AAC 110.060(c)) requiring conformity of proposed borough and REAA boundaries is subordinate to the authority of those constitutional standards.

**F. The remainder of the unorganized borough population lies within the model boundaries of existing organized boroughs.**

As noted earlier, the Commission found in the course of the model borough boundaries project that five areas of the unorganized borough had greater ties to existing organized boroughs than they did to other areas of the unorganized borough. Specifically, the Commission determined the following:

- the City and Borough of Juneau model boundaries were defined to include Hobart Bay (population 3);
- the Denali Borough model boundaries were defined to include Nenana (population 402) and Four Mile Road (population 38);
- the Fairbanks North Star Borough model boundaries were defined to include Livengood (population 29) and Central (population 134);
- the Ketchikan Gateway Borough model boundaries were defined to include Meyers Chuck (population 21) and Hyder (population 97); and
- the Lynn Canal Borough model boundaries (encompassing the existing Haines Borough) were defined to include Klukwan (population 139) and Skagway (population 862).

<sup>18</sup> Alaska is probably the only state that sets regional governmental jurisdictional boundaries on the basis of relevant geo-political standards such as natural geography, social, cultural, transportation, economy, and communications factors. Elsewhere, regional governmental boundaries largely reflect such factors as surveyors' section lines, rivers rather than natural drainage basins and like unifying natural geographic features, centuries-old post-colonial county boundaries, etc. Further, unlike Alaska, boundaries of regional governments in other states are typically much harder to revise to reflect changing socioeconomic and other conditions.